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Dirprwy Gyfarwyddwr, Cyfalaf, Ystadau a Cyfleusterau/
Deputy Director, Capital, Estates & Facilities
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Y Grwp Iechyd a Gwasanaethau Cymdeithasol/Health &
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Llywodraeth Cymru/Welsh Government



Llywodraeth Cymru
Welsh Government

Ms Tracy Myhill
Chief Executive
Swansea Bay University Health Board
1 Talbot Gateway,
Swansea
SA12 7BR

30th January 2020

Dear Tracy,

Award of Capital Funding to Swansea Bay University Health Board in respect of Perinatal Mental Health Mother and Baby Unit at Tonna Hospital.

1. Award of Funding

- (a) We are pleased to inform you that funding of up to **£1,496,000** (*One Million, & Four Hundred and Ninety Six Thousand Pounds*) ("the Funding") is awarded to you for the Purposes (as defined in Condition 4(a)).
- (b) The Funding relates to the period 1 April 2020 to 31 March 2021 and must be claimed in full by 31 March 2021 otherwise any unclaimed part of the Funding will cease to be available to you.
- (c) If you have any queries in relation to this award of Funding or the Conditions please contact the Welsh Government Official who will be happy to assist you.

2. Statutory Authority and State Aid

- (a) This award of Funding is made on and subject to the Conditions and under the authority of the Minister for Health, and Social Services, one of the Welsh Ministers, acting pursuant to sections 1 and 2 of the NHS Wales Act (2006), and functions transferred under section 58a of the Government of Wales Act 2006.

(b) You must comply with the European Commission's State Aid Rules.

3. Interpreting these Conditions

Any reference in these Conditions to:

'you', 'your' is to Swansea Bay University Health Board

'we', 'us', 'our' is to the Welsh Ministers;

'Application' is in respect of Funding for the Perinatal Mental Health Mother and Baby Unit at Tonna Hospital.

'Welsh Government Official' is to

Val Whiting
Deputy Director, Capital Estates and Facilities
Department for Health and Social Services
Welsh Government
4th Floor Cathays Park
Cardiff
CF10 3NQ

Tel: 03000 254517

Email: Valerie.Whiting001@gov.wales

or such other Welsh Government official as we may notify you.

'Project Manager' is to

Mrs Sian Harrop-Griffiths
Swansea Bay University Health Board
1 Talbot Gateway
Swansea
SA12 7BR

Tel: 01639 683327

e-mail: Sian.harrop-griffiths@wales.nhs.uk

'Conditions' is to the terms and conditions set out in this letter;

'Costs Incurred' is to the cost of goods and services you have received regardless of whether you have paid for them by the date of your claim.

'Notification Event' is to any of the events listed in Schedule 3;

'Payment Profile' is to the payment profile set out in Schedule 1;

'Schedule' is to the schedules attached to this letter;

'State Aid Rules' is to the rules set out in Articles 107 to 109 of the Treaty on the Functioning of the European Union (or in those Articles that may succeed Articles 107 to 109), secondary legislation such as frameworks, guidelines and block exemptions produced by the European Commission derived from Articles 107 to 109, case law of the European Courts and decisions of the European Commission regarding the application of Articles 107 to 109; and

any reference to any legislation whether domestic, EU or international law will include all amendments to and substitutions and re-enactments of that legislation in force from time to time.

4. What you must use the Funding for

- (a) You must use the Funding solely for the purposes set out in Schedule 1 (the **"Purposes"**).
- (b) Any change to the Purposes will require our written consent which must be obtained from us in advance of implementing any change. Please note that we are not obliged to give our consent but we will consider all reasonable written requests.
- (c) You must not use any part of the Funding for: (1) party political purposes; (2) the promotion of particular secular, religious or political views; (3) gambling; (4) pornography; (5) offering sexual services; (6) purchasing capital equipment (other than as specified in the Purposes); (7) your legal fees in relation to this letter; (8) Costs Incurred or costs incurred and defrayed by you in the delivery of the Purposes prior to the period referred to in Condition 1 (b); (9) any kind of illegal activities; or (10) any kind of activity which in our opinion could bring us into disrepute.

5. Funding Pre-Conditions

- (a) We will not pay any of the Funding to you until you have provided us with the following information and documentation:
 - (i) documentary evidence that the signatories who have signed this letter on your behalf are duly authorised to do so;
 - (ii) documentary evidence that you have appropriate systems in place to undertake due diligence before utilising any part of the Funding to provide a grant to or procure any goods or services from third parties;
- (b) Where you are required to provide information and documentation to us as evidence that you have satisfied a particular pre-condition, Condition or in support of a claim, the information and documentation must be in all respects acceptable to us. We reserve

the right to reject any information and documentation which is for any reason not acceptable to us.

6. How to claim the Funding

- (a) The Funding will be paid to you in arrears based on costs incurred by you in the delivery of the Purposes.
- (b) The associated resource allocation will be identified on your specific Capital Resource Limit Schedule.
- (c) The resource will then be added to the Health Board's Capital Resource Limit schedule with the corresponding impact on the level of cash available to draw down

7. Your general obligations to us

You must:

- (a) safeguard the Funding against fraud generally and, in particular, fraud on the part of your management, employees and/or suppliers and notify us immediately if you have reason to suspect that any fraud has occurred or is occurring or is likely to occur. You must also participate in such fraud prevention initiatives as we may require from time to time.
- (b) comply with all applicable laws or regulations or official directives whether derived from domestic, EU or international law;
- (c) put in place and maintain adequate insurances to cover against the risks which may arise in connection with any property or any activity undertaken in delivery of the Purposes. We reserve the right to require you to provide proof of your insurance;
- (d) co-operate fully with the Welsh Government Official and with any other employee of the Welsh Government or consultant appointed by us to monitor your use of the Funding and your compliance with these Conditions.
- (e) inform us immediately if any of the declarations made in Condition 8 is incorrect in any respect or, if repeated at any time with reference to the facts and circumstances then existing, would be incorrect.
- (f) Provide monthly Project Progress Reports to Welsh Government official/Zara Morris Zara.Morris@gov.wales by 5pm on the 12th working day of each month

8. Declarations

You declare that:

- (a) you have the power to enter into and to perform the obligations set out in these Conditions and you have taken all necessary action to authorise the entry into and performance of the obligations under these Conditions;
- (b) no litigation or arbitration is current or pending or, so far as you are aware, threatened, which have or could have an adverse effect on your ability to perform and comply with any of these Conditions;
- (c) the information contained in your Application is complete, true and accurate;
- (d) you have disclosed to us all material facts or circumstances which need to be disclosed to enable us to obtain a true and correct view of your business and affairs (both current and prospective) or which ought to be provided to any person who is considering providing funding to you;

9. Notification Events and their consequences

- (a) You must notify us immediately if a Notification Event has occurred or is likely to occur but we also reserve the right to notify you where we believe a Notification Event has occurred or is likely to occur.
- (b) We will either (i) notify you that we consider that the Notification Event is not capable of remedy or (ii) if we consider that the Notification Event is capable of being remedied seek to discuss the Notification Event with you with a view to agreeing a course of action to be taken to address the Notification Event.
- (c) We will be entitled to take any of the actions listed in Condition 9(d) if:
 - (i) despite our reasonable efforts we have been unable to discuss the Notification Event with you, or
 - (ii) we notify you that the Notification Event is not capable of remedy, or
 - (iii) a course of action to address the Notification Event is not agreed with you; or
 - (iv) a course of action is agreed with you but you fail to follow it, or any conditions attached to it are not met (including without limitation the timescale for such course of action), or
 - (v) the course of action fails to remedy the Notification Event to our satisfaction.
- (d) If any of the circumstances set out in Condition 9(c) occurs we may by notice to you:
 - (i) withdraw the award of Funding; and/or

- (ii) require you to repay all or part of the Funding immediately; and/or
 - (iii) suspend or cease all further payment of Funding; and/or
 - (iv) make all further payments of Funding subject to such conditions as we may specify; and/or
 - (v) deduct all amounts owed to us under these Conditions from any other funding that we have awarded or may award to you; and/or
 - (vi) exercise any other rights against you which we may have in respect of the Funding.
- (e) All repayments of Funding must be made to us within 28 days of the date of our demand. If applicable, you must pay interest on any overdue repayments (on a compound basis) in accordance with the State Aid Rules.

10. Monitoring Requirements

You must:

- (a) provide us with such documents, information and reports which we may reasonably require from time to time in order for us to monitor your compliance with the Conditions;
- (b) meet with the Welsh Government Official and such other of our representatives as we may from time to time reasonably require;
- (c) ensure that the Project Manager (or such other person as we may agree) together with any other person we may require attends all meetings with the Welsh Government Official.

11. Audit Requirements

- (a) You must:
 - (i) maintain clear accounting records identifying all income and expenditure in relation to the Purposes;
 - (ii) without charge, permit any officer or officers of the Welsh Government, Wales Audit Office or European Commission at any reasonable time and on reasonable notice being given to you to visit your premises and/or to inspect any of your activities and/or to examine and take copies of your books of account and such other documents or records as in such officer's reasonable view may relate in any way to your use of the Funding. This undertaking is without prejudice and subject to any other statutory rights and powers exercisable by the Welsh Government, Wales Audit Office or the European Commission or any officer, servant or agent of any of the above;

- (iii) retain this letter and all original documents relating to the Funding until we inform you in writing that it is safe to destroy them;
- (b) Under paragraph 17 of Schedule 8 to the Government of Wales Act 2006 the Auditor General for Wales has extensive rights of access to documents and information relating to monies provided by the Welsh Government. He and his officials have the power to require relevant persons who control or hold documents to give any assistance, information and explanation that they may require; and to require those persons to attend before them for such a purpose. The Auditor General and his staff may exercise this right at all reasonable times.

12. Third Party Obligations

- (a) Nothing in the Conditions imposes any liability on us in respect of any liability incurred by you to any third party (including, without limit, employees and contractors).
- (b) You must indemnify us against any liabilities, claims, proceedings, demands, losses, costs and expenses suffered or incurred by us directly or indirectly arising as a result of or in connection with any failure by you to perform fully or in part any obligation you may have to a third party.

13. Intellectual Property Rights & Publicity

- (a) Nothing in these Conditions transfers to us any rights in any intellectual property created by you as a result of the Purposes.
- (b) You must acknowledge our support on all publicity, press releases and marketing material produced in relation to the Purposes. Such acknowledgement must be in a form approved by us and must comply with the Welsh Government's branding guidelines.
- (c) You agree that from the date of this letter until 5 years from the date of the final payment of Funding we may include details about your organisation and business, the Funding and the Purposes in Welsh Government promotional materials and you further agree to cooperate with our reasonable requests to achieve the production of such materials.

14. Access to Information

- (a) You acknowledge that we are subject to the requirements of the Freedom of Information Act 2000 (the "FOIA"), the Environmental Information Regulations 2004 (the "EIR"), the Data Protection Act 2018 (the "DPA"), and the General Data Protection Regulation (Regulation (EU) 2016/679) (the "GDPR")

- (b) The information we have collected from you will be shared with fraud prevention agencies who will use it to prevent fraud and money-laundering and to verify your identity. If fraud is detected, you can be refused certain services, finance or employment in future. Further details of how your information will be used by us and these fraud prevention agencies, and your data protection rights can be found by contacting Data.Protectionofficer@gov.wales
- (c) You acknowledge that we are responsible for determining in our absolute discretion whether:
 - (i) to disclose any information which we have obtained under or in connection with the Funding to the extent that we are required to disclose such information to a person making a disclosure request under the FOIA or the EIR; and/or
 - (ii) any information is exempt from disclosure under the Code, the FOIA or the EIR.
- (d) For the avoidance of doubt, you are the data controller (as defined in the Data Protection Act 2018) in respect of the 'Purposes'

15. Buying Goods and Services

If you decide to buy any goods and/or services to deliver the Purposes, they must be purchased in a competitive and sustainable way so as to demonstrate that you have achieved best value in the use of public funds.

16. Giving Notice

- (a) Where notice is required to be given under these Conditions it must be in writing (this does not include email but may include a letter attached to an email) and must prominently display the following heading:

“Notice of the award of Capital Funding to Swansea Bay University Health Board in respect of Perinatal Mental Health Mother and Baby Unit at Tonna Hospital.”

- (b) The address and contact details for the purposes of serving notice under these Conditions are as follows

You: the Project Manager at the address stated in Condition 3.

Us: the Welsh Government Official at the address stated in Condition 3.

- (c) A notice will be deemed to have been properly given as follows:-

Prepaid first class post:	on the second working day after the date of posting.
By hand:	upon delivery to the address or the next working day if after 4pm or on a weekend or public holiday.
By email attachment:	upon transmission or the next working day if after 4pm or on a weekend or public holiday.

17. Equal Opportunities

You must apply a policy of equal opportunities as employers, as users of volunteers, and as providers of services, regardless of race, gender/gender identification, sexual orientation, religion and belief, age or any disability.

18. Welsh Language

Where the Purposes include or relate to the provision of services in Wales they must be provided in such a way as to not treat the Welsh language less favourably than English, in accordance with the Welsh Language (Wales) Measure 2011.

For advice on providing services bilingually and in accordance with the Conditions please contact the Welsh Language Commissioner's Hybu team:

<http://www.comisiynyddygybraeg.cymru/hybu/en/home/Pages/home.aspx>

19. Sustainability

- (a) Your use of the Funding must (where reasonably practicable) meet the Welsh Government's current agenda for sustainable development and the environment.
- (b) Please report any community benefits achieved by you through your use of the Funding and/or any third party procured by you in connection with the Purposes using the Welsh Government's Community Benefits Measurement Tool. A copy of the Measurement Tool is available at www.prp.wales.gov.uk/toolkit/.
- (c) Where applicable, you must ensure that a suitably experienced (Building Research Establishment Environmental Assessment Method (BREEAM) Assessor is appointed to conduct:
 - i) a BREEAM Design Stage Assessment

- ii) a BREEAM Post Construction State Assessment
 - iii) and to issue the appropriate BRE Certificates, for the building
- (d) You must use best endeavours to obtain a BREEAM Rating of excellent in the BREEAM Design Stage Assessment and Post Construction Stage Assessment for the Building, and that the appropriate BRE Certificates confirm an excellent rating.
- (e) You must ensure the BREEAM Design Stage Assessment and Post Construction Stage Assessment for the Building is carried out promptly by the BREEAM Assessor. The reports and subsequent BRE Certificates from the BREEAM Assessor in relation to the BREEAM Design Stage and Post Construction Assessments shall be provided to the Welsh Government Official.
- (f) On completion of the Building you shall provide written evidence to the Welsh Government Official that at least 10% of the total value of materials used in the Property is recycled or reused materials or products.

20. Welsh Ministers' Functions

You acknowledge that the Welsh Ministers have a range of functions which will continue to accrue and be amended and that decisions in relation to each such function are obliged to be taken in the light of all relevant and to the exclusion of all irrelevant considerations. You agree that nothing contained or implied in, or arising under or in connection with, these Conditions will in any way prejudice, fetter or affect the functions of the Welsh Ministers or any of them nor oblige the Welsh Ministers or any of them to exercise, or refrain from exercising, any of their functions in any particular way.

21. General

- (a) If at any time any of these Conditions is deemed to be or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired.
- (b) No failure or delay on our part to exercise any power, right or remedy under these Conditions will operate as a waiver of any such power, right or remedy or preclude its further exercise or the exercise of any other power, right or remedy. The powers, rights or remedies hereby provided are cumulative and not exclusive of any powers, rights or remedies provided by law.
- (c) Any amendment or variation to these Conditions must be in writing and signed by us and you in the same manner as this letter.

- (d) You may not assign or otherwise dispose of in any way your rights, benefits, obligations or duties under these Conditions.
- (e) Conditions 7, 9, 11, 13, 14, and 19 and such other Conditions which by implication need to continue in force beyond the final payment of Funding will so continue in full force and effect.
- (f) The award of the Funding is to you alone and no one else is entitled to make any claim in respect of the Funding or seek to rely on or enforce any of these Conditions.
- (g) These Conditions are to be governed by and construed in accordance with the laws of Wales and England as applied in Wales and the parties hereto submit to the exclusive jurisdiction of the courts of Wales and England.
- (h) In circumstances where you comprise two or more persons or bodies, the liabilities of such persons or bodies shall be joint and several and the default of one of such persons or bodies shall be deemed to be the default of all.

22. How to accept this offer of Funding

- (a) To accept this award of Funding you must sign and return a copy of this letter to the Welsh Government Official. None of the Funding will be paid to you until we have received your signed letter.
- (b) We must receive your signed letter within 14 days of the date of this letter, or this award of Funding will automatically be withdrawn.

Yours sincerely



Val Whiting

Under the authority of the Minister for Health and Social Services, one of the Welsh Ministers.

SCHEDULE 1 The Purposes

The Minister for Health and Social Services has agreed to make available up to **£1.496m** of Funding to Swansea Bay University Health Board in respect of the establishment of a six bedded Perinatal Mental Health Mother and Baby Unit at Tonna Hospital.

For the avoidance of doubt, **£1.496m** is the approved Capital ceiling and funding will be subject to scrutiny of works design and costs by NWSSP SES and any overspend must be met by the contracting Health Board.

The agreed capital funding and progress will be discussed at the Capital Review meetings

Evaluation requirements associated with the provision of this funding are identified within schedule 3.

For further information, please refer to the current NHS Infrastructure Capital Guidance.

SCHEDULE 2

Notification Events

The Notification Events referred to in Condition 9 are listed below:

1. repayment of any part of the Funding is required under European Law (whether under State Aid Rules or otherwise);
2. you fail to comply with any of the Conditions;
3. you fail to provide information about the Purposes requested by us, the European Commission or the European Court of Auditors, or any of their auditors, agents or representatives;
4. we have reason to believe that you and/or any of your Personnel are involved in fraudulent activity or have been involved in fraudulent activity [whilst the Purposes are/were being carried out];
5. we have made an overpayment of Funding to you;
6. any declaration made in Condition 8 is incorrect in any respect or, if repeated at any time with reference to the facts and circumstances then existing, would be incorrect;
7. there has been a modification (qualification, adverse or disclaimer) to the auditor's opinion on your financial statements;
8. any petition is presented or resolution passed or other action taken for your bankruptcy or winding-up or a petition is presented for an administration order against you;
9. a receiver or an administrative receiver is appointed in respect of you or in respect of all or any part of your assets;
10. a moratorium in respect of all or any of your debts or a composition or an agreement with your creditors is agreed, applied for, ordered or declared;
11. you are unable, or admit in writing your inability, to pay your debts as they fall due;
12. any distress, execution, attachment or other process affects any of your assets;
13. a statutory demand is issued against you;
14. you cease, or threaten to cease, to carry on all or a substantial part of your business;

15. there is any change, whether permanent or temporary, in your shareholders, directors, trustees or partners and/or Personnel which may affect your ability to deliver the Purposes;
16. any event occurs or circumstances arise which in our opinion gives reasonable grounds for believing that you may not, or may be unable, to perform or comply with any of your obligations under these Conditions.
17. you plan to sell, transfer, lease or otherwise dispose of all or any substantial part of the assets purchased as part of the Purposes within five years from the completion of the Purposes.
18. you plan to move all or any substantial part of the assets purchased as part of the Purposes from the Premises for five years from the completion of the Purposes.
19. Should gainshare be realised through the scheme, retention and utilisation of the organisation's share will be subject to Ministerial agreement.

SCHEDULE 3

Evaluation Requirements

The Health Board need to note that a future benefits realisation exercise will be undertaken – in conjunction with the Welsh Government Assurance Hub. This will be initiated at a future point in time once the scheme is completed and is up and running.

TWO SIGNATORIES ARE REQUIRED

We hereby accept the award of Funding to Swansea Bay University Health Board in respect of Perinatal Mental Health Mother and Baby Unit at Tonna Hospital.

_____ Signature
An authorised signatory of Swansea Bay University Health Board

_____ Name

_____ Job Title

_____ Date

_____ Signature
An authorised signatory of Swansea Bay University Health Board

_____ Name

_____ Job Title

_____ Date